## UNITED STATES DISTRICT COURT DISTRICT OF MASSACHUSETTS

SMALL JUSTICE LLC,	)
And others,	)
Plaintiffs,	) ) 
v.	) CIVIL ACTION NO. 1:13-cv-11701-DJC
XCENTRIC VENTURES LLC,	) )
Defendant.	)

PLAINTIFFS' CONSENT MOTION FOR LEAVE TO FILE A NOTICE OF SUPPLEMENTAL AUTHORITY IN OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT.

Pursuant to Local Rule 7.1(b)(3), plaintiffs request leave to file a notice of supplemental authority in support of their August 4, 2014 opposition (Paper 64) to defendant's June 13, 2014 motion for summary judgment (Doc. 55). The proposed notice of supplemental authority is attached as Exhibit A. The plaintiffs would call the Court's attention to *Hendricks & Lewis PLLC v. Clinton*, 766 F. 3d 991 (9<sup>th</sup> Cir. Amended opinion Aug. 26, 2014), *Jane Doe 14 v. Internet Brands, Inc.*, 767 F.3d 894 (9<sup>th</sup> Cir. Sept. 17, 2014) and *Auto Flat Car Crushers, Inc. v. Hanover Ins. Co.*, 469 Mass. 813 (October 15, 2014).

In their August 4, 2014 brief, plaintiffs cited *Hendricks and Lewis PLLC v. Clinton*, 2014 WL 2808138, \_\_ F. 3d \_\_ (9<sup>th</sup> Cir. June 23, 2014) (see Paper 64 at 21, 22). The Ninth Circuit's June 23, 2014 opinion was amended and its amended opinion issued on August 26, 2014.

Plaintiffs' August 4, 2014 brief addressed the Chapter 93A standards for both section 9—appertaining to DuPont's defense of Xcentric's counterclaim—and section 11—appertaining to

Goren's affirmative claims. On October 15, 2014, the SJC issued *Auto Flat Car Crushers, Inc.* v. *Hanover Ins. Co.*, 469 Mass. 813 (2014) which addresses the section 11 standards.

On October 24, 2014, defendant filed a notice of supplemental authority bringing to the Court's attention—apparently addressing plaintiffs' 93A claims—the Ninth Circuit case of *Levitt v. Yelp!*, 765 F. 3d 1123 (9<sup>th</sup> Cir. Sept. 2, 2014). On September 17, 2014, the Ninth Circuit issued its opinion in *Jane Doe 14 v. Internet Brands, Inc.*, 767 F.3d 894 (9<sup>th</sup> Cir. 2014) (CDA is not a legislative grant of general immunity from liability derived from, or having a "but for" relationship with, third party content; CDA does not preclude a tort claim under California law for failure to warn a user).

Defendant does not object to allowance of this motion.

WHEREFORE, Plaintiffs request leave to file the attached Notice of Supplemental Authority in opposition to Defendant's June 13, 2014 motion for summary judgment.

Respectfully submitted,

SMALL JUSTICE LLC, RICHARD A. GOREN, and CHRISTIAN DUPONT, Plaintiffs,

by their attorney,

October 30, 2014

of their attorney,

/s/ Richard A. Goren
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<sup>&</sup>lt;sup>1</sup> See, e.g., Paper 64 at 26 "Nor must Goren prove that Xcentric intended to deceive him or that he relied on the unfair or deceptive act or practice. *Aspinall v. Philip Morris Cos.*, 442 Mass. 381, 394 (2004). It is sufficient if there is a causal relation between the act or practice and some injury to Goren. *Fraser Eng'g Co., Inc. v. Desmond*, 26 Mass. App. Ct. 99, 104 (1988)."

## CERTIFICATE OF COMPLIANCE WITH LR 7.1 (a)(2) and CERTIFICATE OF SERVICE

I hereby certify that I conferred with counsel for the defendant and defendant does not object to allowance of this motion.

/s/ Richard A. Goren

I hereby certify that this document will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF), and that paper copies will be sent to those non-registered participants (if any) on October 30, 2014.

/s/ Richard A. Goren